REMARKS

Amendment

By this Amendment, claim 12 was amended to recite that this is an opener in order to be consistent with dependency on claim 10, and to correct a typographical error. No new matter was added. Accordingly, claim 12 should be properly grouped with claim 10 in the restriction requirement, and therefore moots the identification of Group III as a separate group.

Restriction Requirement

The examiner has required a restriction under 35 U.S.C. §121, and has alleged that the application contains distinct inventions, identified as Groups I, II, III, IV and V. Paper No. 8, page 2, paragraph B. Applicants respectfully disagree, and therefore have TRAVERSED this restriction requirement. Applicants request that the examiner reconsider this restriction requirement in view of the following remarks.

This application is a National Phase of a PCT application under 35 U.S.C. §371, and is not an application filed under 35 USC 111(a). MPEP § 1893(d) points out that with respect to national stage applications filed under 35 USC 371, restriction practice under 35 USC 121 is inapplicable. Rather, Unity of Invention practice under PCT Rule 13 and 37 CFR 1.475 applies. Accordingly, Restriction Requirements are governed under the Unity of Invention standards, and the examiner must clearly specify why the claims directed to different groups of inventions lack a common special technical feature. Namely, Unity of Invention exists when claims are directed to a common special technical feature. This is discussed in detail in Chapter 1800 of the MPEP. Examples concerning Unity of Invention are given in the Annex to the MPEP, specifically Part 2 of Annex B to the Administrative Instructions Under the PCT.

The examiner acknowledges that Groups I, III and V are all related to the apparatus, but having different embodiments. See Paper No. 8, page 2, bottom paragraph. Accordingly, the examiner de facto acknowledges the common technical feature, and therefore there is a single general inventive concept under PCT Rule 13.1.

Still further, the examiner states "Invention Groups (I, III and V) and II are related as combination and subcombination." See Paper No. 8, page 3, line 1. This is also a de facto acknowledgement that there is a single general inventive concept under PCT Rule 13.1.

Still further, the examiner states "Invention Groups ((I, III and V) and II) and Group IV are related as combination and subcombination." See Paper No. 8, page 3, lines 14-15

(beginning of bottom paragraph). This is also a de facto acknowledgement that there is a single general inventive concept under PCT Rule 13.1.

Accordingly, a restriction requirement alleging lack of unity would be improper, and the present restriction under 35 USC 121 is inapplicable and must be withdrawn.

As there is no restriction based on lack of Unity of Invention, withdrawal of the entire Restriction Requirement under 35 USC 121 is respectfully requested.

Furthermore, it is respectfully submitted that the subject matter of all the claims is sufficiently related that a thorough search for the subject matter of any one claim would encompass a search for the subject matter of the remaining claims. This is evidenced by the International Search Report. Thus, it is respectfully submitted that the search and examination of the entire application could be made without serious burden. See MPEP §803 in which it is stated that "if the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."

It is respectfully submitted that this policy should apply in the present application in order to avoid unnecessary delay and expense to Applicants and duplicative examination by the Patent Office.

However, if a restriction is to be maintained, Applicants believe that the proper restriction under the unity of invention standard is the combination of Groups I, II, III and V (claims 1-13, 19).

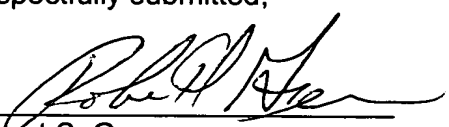
Applicants, of course, reserve the right to file a divisional application covering the subject matter of the non-elected groups.

Receipt of the initial Office Action on the merits is awaited.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. AAO-255 from which the undersigned is authorized to draw.

Dated: October 27, 2003

Respectfully submitted,

By 

Robert S. Green
Registration No.: 41,800
RADER, FISHMAN & GRAUER PLLC
1233 20th Street, N.W.
Suite 501
Washington, DC 20036
(202) 955-3750
Attorney for Applicant